

The true doctrine on this question is fairly stated in Philimore's International Law: "With respect to merchant and private vessels, the general rule of law is that, except under the provisions of an express stipulation, such vessels have no exemption from the territorial jurisdiction of the harbour or port, or, so to speak, territorial waters (*mer litorale*) in which they lie."<sup>44</sup> And he supports this by citing the doctrine so clearly expounded by Chief Justice Marshall in the following judgment: "When private individuals of one nation spread themselves through another, as business or caprice may direct, mingling indiscriminately with the inhabitants of that other; or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continued infraction, and the Government to degradation, if such individuals or merchants, did not owe temporary and local allegiance, and were not amenable, to the jurisdiction of the country. Nor can any foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him; nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption." "One sovereign being in no respect amenable to another, is bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself, or its sovereign territorial rights, within the jurisdiction of another."<sup>45</sup>

British law is to the same effect. In the *Franconia* case, the judges generally concurred with Mr. Justice Lindley, when he said: "It is conceded that even in time of peace, the territoriality of a foreign merchant-ship within three miles of the coast of any state, does not exempt that ship, or its crew, from

<sup>44</sup>Vol. 1, page 483.

<sup>45</sup>*Schooner Exchange v. McFadden*, 7 Cranch (U.S.) 144.